

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of Nebraska Resources )  
Company, LLC, Tulsa, Oklahoma, )  
Seeking a Certificate of Public )  
Convenience and Necessity Authorizing )  
It To Operate As A Jurisdictional Utility )  
In Nebraska and Approval of Tariff )

Application No. NG-0053

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**COMMENTS OF NEBRASKA RESOURCES COMPANY, LLC  
ON THE SCOPE OF THE PROCEEDINGS AND THE PROPOSED SCHEDULE**

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**I. INTRODUCTION**

By Order entered March 5, 2008, the Hearing Officer in the above captioned proceeding sought comments from the parties on the scope of the proceedings and the proposed schedule ("March 5th Order"). The Nebraska Resources Company, LLC ("NRC") supports the Nebraska Public Service Commission's proposed scope of the hearing and the proposed schedule.

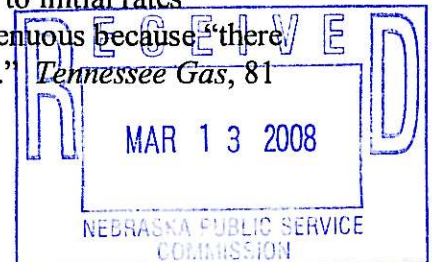
**II. SCOPE OF THE HEARING**

**A. NRC SUPPORTS A SINGLE HEARING**

Staff has proposed that the certification and rate review issues be addressed in a single hearing. NRC believes this is appropriate given that the rates to be charged are a factor in determining whether the NRC Pipeline is in the public interest. Moreover, rate review of initial rates is less cumbersome than the review ordinarily undertaken in a full rate filing.

**1. The Scope Of The Evidence Available Must Dictate The Procedure Employed.**

Evidentiary considerations limit the scope of the hearing conducted by the Commission before approving NRC's proposed initial rates. Necessarily, NRC's proposed initial rates are based on *estimated* costs, revenues, and billing determinants. *Actual* cost, revenue and volume data that would normally be supplied in a "full" rate hearing are simply non-existent where a new facility such as the NRC Pipeline is concerned. However, the testimony and evidentiary support for NRC's proposed initial rates will necessarily be different from and more limited than that which would be submitted in an ordinary rate case based on actual costs, revenues and volumes during the base and test periods. In *Tennessee Gas Pipeline Co.*, 81 FERC ¶ 61,224 (1997) ("*Tennessee Gas*"), the Federal Energy Regulatory Commission ("FERC") explained that the "just and reasonable" standard of the Natural Gas Act ("NGA") applies to initial rates established in a certificate proceeding, but the review is necessarily less strenuous because "there is no historical experience on which the Commission can evaluate the rates." *Tennessee Gas*, 81 FERC at 61,949.



To be sure, careful scrutiny of the basis for the cost, revenue and volume *estimates* utilized to develop NRC's proposed initial rates is certainly warranted. Moreover, the reasonableness of NRC's estimates is a proper subject for inquiry at a hearing to review proposed initial rates. However, this focused testimony can be readily accommodated during the hearing proposed in this matter by Staff and need not be deferred to a later hearing to deal exclusively with rate issues.

**2. Bifurcating The Certificate Proceeding By Conducting A Separate Rate Case Would Add Unnecessary Delay.**

The FERC and its predecessor, the Federal Power Commission ("FPC"), have a long-standing policy of not conducting a full rate review hearing in a certificate proceeding. This policy was recognized by the Supreme Court as appropriate because certificate "procedures are designed to 'to hold the line awaiting adjudication of a just and reasonable rate' . . ." *United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 228 (1965) ("*Callery*"), quoting *Atlantic Refining Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 392 (1959) ("*CATCO*"). In *Callery*, the Court recognized that if the FPC were required to consider all of the cost evidence it would normally consider in a "full-blown" NGA rate proceeding, the practical effect would be to "render nugatory any effort to fix initial prices." *Callery*, 360 U.S. at 228. So too here, conducting a "full blown" rate case as a separate phase of the proceedings would unduly delay the certification process.

**3. A Full Rate Case Is Unnecessary For Establishing Initial Rates Intended Only To Serve As "Interim" Rates.**

In *Iroquois Gas Transmission System, L.P.*, 84 FERC ¶ 61,086 (1998) ("*Iroquois*"), the FERC explained that "[u]nder current ratemaking principles, initial rates set [in a certificate proceeding] are only *interim* rates because, although they meet the Natural Gas Act's just and reasonable standard, *they are expected to be reviewed in later rate cases.*" *Iroquois*, 84 FERC at 61,438 (emphasis added). Thus, FERC's current policy is to require new pipelines to file a cost and revenue study three years after initial certificate approval. FERC makes a determination based on this study whether to institute a rate proceeding to establish just and reasonable rates or to allow the existing rates to remain in effect. In the alternative, the pipeline may file a rate case in lieu of the cost and revenue study. *Trunkline LNG Co.*, 82 FERC ¶ 61,198, at 61,780 (1998); *see also, e.g., Cheniere Creole Trail Pipeline, L.P.*, 121 FERC ¶ 61,071, at P 24 (2007). A similar policy could be implemented by the Commission.

**4. The Federal Model Provides Sound Guidance For The Commission.**

FERC's method for establishing initial rates during a certificate proceeding balances the practical impact of having no actual cost experience for the new system at the time of the filing with the need to place a new pipeline into service with cost-based rates in a timely manner. FERC sets forth a clear ratemaking methodology which, if followed by the applicant, yields an appropriate initial rate. Later, when the pipeline has actual experience, it is required to prove up

the initial rates through a cost and revenue study or to file for new rate pursuant to the just and reasonable standard of the Natural Gas Act.

Over a period of many years FERC has determined that this is the best way to provide the checks and balances needed to ensure that the pipeline's cost-based rates provide the pipeline a reasonable opportunity to recover its costs while safeguarding against permitting the pipeline to earn excessive returns through abuse of market power, and at the same time promoting the public interest by allowing the pipeline to go into service without the delay that would be created by conducting a long and expensive rate proceeding based on estimated costs and revenues that do not lend themselves to a formal rate hearing process.

The Commission has the opportunity to take advantage of FERC's long experience in this area and adopt the same methodology for review of the NRC certificate application. NRC has filed for cost-based rates utilizing established ratemaking methodologies and accurately estimated costs, contract demand and revenues. For the purpose of establishing initial rates, the Commission's review, like that of FERC in similar circumstances, should be limited to determining whether the estimated costs and projected volumes are reasonably accurate. Like FERC, the Commission may ask that these calculations be updated at the time the pipeline goes into service to reflect actual experience to that time in areas such as cost of debt. Only later, when NRC has actual operating experience over a significant period of time, will it be worth the effort to determine whether a complete rate review is necessary. Performing a more thorough rate review prior to construction and before actual operating experience yields actual cost, revenue and volume data, provides no benefit whatsoever and only serves to delay construction to the detriment of the public interest.

#### **B. ENVIRONMENTAL COMPLIANCE**

NRC agrees that it is the Commission's duty to determine whether NRC has provided sufficient information to demonstrate that NRC intends to comply with all pertinent environmental regulations. In the absence of a mandate such as that applicable to federal agency actions under the National Environmental Policy Act ("NEPA"), there is no state statutory obligation that the Commission determine whether NRC has actually complied with all the environmental regulations.

The limited finding proposed by staff will discharge the Commission's obligation to consider environmental consequences and concerns generally as part of the "public convenience" determination, without transforming the Commission into an environmental regulatory body. The approach proposed by staff is the most efficient use of the Commission resources consistent with the Commission's express statutory obligations under the State Natural Gas Regulation Act ("SNGRA"). The requirement that NRC apply for and comply with all required environmental permits and authorizations ensures environmental compliance, yet retains an appropriate division of responsibilities between the Commission and agencies with substantive expertise and regulatory responsibilities in their respective areas of environmental protection.

#### **C. DUPLICATIVE PIPING PROHIBITION**

The NRC does not dispute that as part of the certification process the Commission will need to address the duplicative piping prohibition of the SNGRA as it applies to the

jurisdictional services NRC proposes to provide for local distribution companies under the regulatory jurisdiction of the Commission. Because NRC's Application does not seek authorization respecting transportation services to be provided to high-volume ratepayers under negotiated contracts and negotiated terms and conditions of service (such transportation services being exclusively subject to the regulatory jurisdiction of the FERC under the NGA), NRC does not believe that the applicability or inapplicability of the double-piping prohibition of the SNGRA to such high-volume ratepayers has any relevance to whether NRC's proposed service to jurisdictional customers, *i.e.*, municipalities and LDCs, is in the public convenience.

#### **D. RATE DETERMINATION**

NRC agrees that once the Commission has determined that the NRC pipeline is in the public interest, the Commission must also determine whether the proposed rates are just and reasonable. Careful scrutiny of the basis for the cost, revenue and volume *estimates* utilized to develop NRC's proposed initial rates is certainly warranted, as is an inquiry into the reasonableness of NRC's estimates.

A second issue identified by staff is whether the Commission may approve "negotiated rates" under a procedure designed to safeguard against the exercise by NRC of monopoly power. NRC believes this policy issue is a proper subject for inquiry at the hearing in view of the fact that NRC has requested the Commission to approve rates which NRC has negotiated with jurisdictional shippers under procedural and substantive safeguards designed to assure that the negotiated rates do not reflect the exercise of market power by NRC. At the hearing, NRC will be prepared to address the legal and policy grounds on which the Commission is authorized to approve negotiated rates under procedural and substantive safeguards which safeguard against exercise of market power.

In this proceeding, NRC has requested Commission approval of "negotiated rates" for NRC's jurisdictional customers who have elected negotiated rates over traditional cost-of-service based tariff rates. A consequence of approval of these negotiated rates would be a reduction in the need for more intense regulatory review of NRC's proposed initial "recourse rates." All of the shippers who have subscribed to firm capacity on the NRC pipeline have done so pursuant to negotiated rates. Each shipper also had the option of contracting for capacity at a cost-of-service based "recourse rate," the availability of which protected against the potential exercise of market power by NRC. The fact that none of NRC's existing shippers will receive firm service under the recourse rates because they have all elected negotiated rates makes utilization of the procedures employed by FERC for establishing initial rates for new pipelines highly appropriate in this case.

Lastly, NRC agrees with the Staff that open access issues are tied to tariff issues and any questions on open access will be resolved through the rate approval process.

### **III. PROPOSED PROCEDURAL SCHEDULE**

The NRC supports the procedural schedule set forth in the March 5th Order. NRC believes that the Staff's proposed schedule appropriately accelerates filing of pre-filed testimony while including a reasonable time period for discovery and rebuttal. The proposed schedule

should provide a final Commission ruling sufficiently in advance of the in-service requirements of most of the firm shippers who have subscribed to capacity on the pipeline.

#### IV. CONCLUSION

The NRC fully supports the scope of the proceedings and the proposed schedule set forth in the March 5th Order and requests the Commission to adopt this framework without delay.

Respectfully Submitted,

NEBRASKA RESOURCES COMPANY, LLC

A handwritten signature in black ink, appearing to read 'Loel P. Brooks', is written over a horizontal line.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original and three paper copies of the Comments of Nebraska Resources Company, LLC on the Scope of the Proceedings and the Proposed Schedule were filed with the Commission with an electronic copy to [rose.price@psc.ne.gov](mailto:rose.price@psc.ne.gov) and to all those with an email address listed in Appendix A of the March 5, 2008 Order, all on this 13th day of March, 2008:

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